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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2004-40
OAH No. 2006030130

MARIO H. SILVA,

Certified Public Accountant Certification No.
19649

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about July 19, 2005, Complainant Carol Sigmann, in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, filed Accusation No. AC-2004-40 against MARIO H. SILVA (Respondent) before the California Board of Accountancy.

2. On or about December 7, 1973, the California Board of Accountancy (Board) issued Certified Public Accountant Certificate No. 19649 (hereinafter "Certificate") to Respondent. The Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2006, unless renewed.

3. On or about July 26, 2005, Judith A. Baerresen an employee of the Department of Justice, served by Certified Mail a copy of the Accusation No. AC-2004-40, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code

1 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
2 was and is P.O. Box 1268, Brea, CA 92622. A copy of the Accusation, the related documents,
3 and Declaration of Service are attached as **Exhibit A**, and are incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 5. On or about August 12, 2005, Respondent signed and returned a Notice of
7 Defense, requesting a hearing in this matter. A Notice of Hearing was served by first class and
8 certified mail to two addresses provided by Respondent with his Notice of Defense, 22706
9 White Fir Lane, Diamond Bar, CA 91765 and 307 North Brea Boulevard, Suite 101, Brea,
10 California 92621, and it informed him that an administrative hearing in this matter was
11 scheduled for June 2, 2006. Certified mailing return cards, indicating receipt of said Notice at
12 both addresses, were returned by the postal service. Respondent failed to appear at that hearing.
13 A copy of Respondent's Notice of Defense, the Notice of Hearing, and Declaration of Service and
14 certified mailing return cards, are attached hereto as **Exhibit B**, and are incorporated herein by
15 reference.

16 6. Government Code section 11506 states, in pertinent part:

17 "(c) The respondent shall be entitled to a hearing on the merits if the
18 respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a
20 waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a
21 hearing."

22 7. California Government Code section 11520 states, in pertinent part:

23 "(a) If the respondent either fails to file a notice of defense or to appear at
24 the hearing, the agency may take action based upon the respondent's express admissions or upon
25 other evidence and affidavits may be used as evidence without any notice to respondent."

26 8. Pursuant to its authority under Government Code section 11520, the Board
27 finds Respondent is in default. The Board will take action without further hearing and, based on
28 Respondent's express admissions by way of default and the evidence before it, contained in

1 exhibits A and B and Board investigative files of the matter, finds that the allegations in
2 Accusation No. AC-2004-40 are true.

3 9. Respondent is subject to disciplinary action under section 5100,
4 subdivision (g) due to willful violations of Title 16 California Code of Regulations section 52,
5 subdivisions (a), (b) and (d), by reason of his failure to make timely response to Board inquiries,
6 written and telephonic, and the Board's duly issued investigatory subpoena, as follows:

7 A. In or about Spring of 2000, Respondent was randomly selected to
8 submit a self-selected report to be evaluated by the Board's Report Quality Monitoring
9 Committee (RQMC) pursuant to Section 89.1 of the California Accountancy Act.

10 B. Respondent submitted an audit report of financial statements of
11 Dynasty Escrow for the year ended April 30, 1999. After evaluation, the RQMC rated
12 Respondent's work "marginal," finding that the report contained "one or more departures from
13 professional standards that may make the financial report misleading or uninformative."

14 C. On or about September 15, 2000, RQMC sent Respondent a letter
15 by certified mail, in which its findings were explained and remedial education in specified
16 subject areas was recommended. Respondent was further advised that he was required to submit
17 additional work product for evaluation by RQMC by March 30, 2001.

18 D. Respondent failed to submit additional work product by March 30,
19 2001. However, on or about July 26, 2002, Respondent submitted a copy of a financial report for
20 an audit of Dynasty Escrow for the year ended April 30, 2001 ("second report"). The report was
21 dated August 7, 2001. Board staff determined that the second report was also marginal.

22 E. On or about August 16, 2002, Respondent was advised by certified
23 mail to provide the engagement letter, working papers and management letter prepared for the
24 second report. Respondent was further asked to provide copies of his certificates of completion
25 for the continuing education claimed on his July 31, 2002, renewal form. The certified mail
26 receipt showed that the letter was received August 19, 2002, and was signed for by Olivia
27 Tenpenny.

28 F. Written and Telephonic Inquiry

1 1. On October 10, 2002, in a further attempt to obtain materials
2 requested in the August 16, 2002 letter, a Board investigator contacted Respondent by
3 telephone. Respondent told the investigator that he did not remember receiving the
4 August 16, 2002 letter. A second copy was faxed to him.

5 2. On February 24, 2003, another letter was sent to Respondent via
6 certified and regular mail requesting the same information as the August 16, 2002 letter. The
7 letter also advised the licensee that he was a violation of the Accountancy Act if he failed to
8 respond to a Board request within 30 days. The certified mail receipt showed that the letter was
9 received February 26, 2003, and was signed for by R. F. Silva. No response was received.

10 3. Another letter was sent to Respondent via certified and regular
11 mail on April 17, 2003, requesting the same information as in the February 24, 2003 letter. The
12 certified mail receipt showed that the letter was received April 21, 2003, and was signed for by
13 an Alicia S. Almanza. No response was received.

14 4. A Board investigator telephoned Respondent on May 29, 2003, and
15 left a voicemail requesting a return call. Respondent returned the call on May 30, 2003, leaving a
16 voicemail stating he would be out of the office the next two days and would call again on
17 "Tuesday." Respondent did not call Tuesday or at any time prior to the investigator's next call.

18 5. A Board investigator telephoned Respondent again on July 9, 2003
19 and left a voicemail stating that he needed a response to the April 17, 2003 letter. Respondent
20 called back later the same day and left a voicemail stating he would be out of the office the rest of
21 the week and would call again "Monday afternoon". Respondent did not call again.

22 G. Investigatory Subpoena

23 1. Complainant authorized issuance of an investigatory subpoena to
24 Respondent, pursuant to section 5108 directing Respondent to produce certain documents and
25 information by mail or delivery to the Board's office in Sacramento.

26 2. The subpoena and accompanying documents were served by first
27 class and certified mail to Respondent's address of record on September 15, 2003.

28 3. Respondent produced nothing in timely response to the subpoena.

1 10. Respondent is subject to disciplinary action under section 5062, due to his
2 issuance of a report upon completion of his audit of financial statements of Dynasty Escrow for
3 the year ending April 30, 2001, which does not conform to professional standards.

4 A. The audit report does not conform to professional standards because
5 it failed to include the following:

6 1. A title that includes the word independent.

7 2. A statement that the financial statements identified in the report were
8 audited.

9 3. A statement that the financial statements are the responsibility of the
10 Company's management and that the auditor's responsibility is to express an opinion on the
11 financial statements based on his or her audit.

12 4. A statement that the audit was conducted in accordance with
13 generally accepted auditing standards and an identification of the United States of America as the
14 country of origin of those standards.

15 5. A statement that those standards require that the auditor plan and
16 perform the audit to obtain reasonable assurance about whether the financial statements are free of
17 material misstatement.

18 6. A statement that an audit includes :

19 (a) Examining, on a test basis, evidence supporting the amounts and
20 disclosures in the financial statements.

21 (b) Assessing the principles used and significant estimates made by
22 management.

23 (c) Evaluating the overall financial statement presentation.

24 7. A statement that the auditor believes that his or her audit provides a
25 reasonable basis for his or her opinion.

26 8. An opinion as to whether the financial statements present fairly, in
27 all material respects, the financial position of the Company as of the balance sheet date and the
28 results of its operations and its cash flows for the period then ended in conformity with generally

1 accepted accounting principles. The opinion should include an identification of the United States
2 of America as the country of origin of those accounting principles.

3 B. The Audit Report does not conform to professional standards
4 because it did not address the extent of responsibility for supporting schedules.

5 C. The Audit Report does not conform to professional standards
6 because it contains substantive errors and omissions. On the Statement of Income, there is a
7 caption, "Provision for federal income taxes - net of loss carryover", yet there is no note disclosing
8 the amounts and expiration dates of the loss carryover. The balance sheet shows Accrued
9 California Corporation Tax of \$800, yet there is no income tax expense noted on the Statement of
10 Income. There is no disclosure of any income taxes, except for the previously noted caption.

11 D. It is noted that the subject audit report was virtually identical to the
12 first report (the April 30, 1999 audit report of Dynasty Escrow) Respondent submitted to RQMC -
13 and does not evidence all corrections recommended by the RQMC in its evaluation.

14 11 The total costs for investigation and enforcement to date are Nine thousand,
15 Six Hundred and Ninety Seven Dollars (\$ 9,697.00).

16 DETERMINATION OF ISSUES

17 1. Based on the foregoing Findings of Fact, Respondent MARIO H. SILVA
18 has subjected his Certified Public Accountant Certificate No. 19649 number to discipline under
19 Business and Professions Code sections 5100, subdivision (g) due to willful violations of Title 16
20 California Code of Regulations section 52, subdivisions (a), (b) and (d), and section 5062.

21 2. A copy of the Accusation and the related documents and Declaration of
22 Service are attached.

23 3. The agency has jurisdiction to adjudicate this case by default.

24 4. The California Board of Accountancy is authorized to revoke Respondent's
25 Certified Public Accountant Certificate No. 19649, based on causes for discipline.

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1 ORDER

2 WHEREFORE the California Board of Accountancy issues its decision that the
3 Certified Public Accountant Certificate No. 19649 heretofore issued to Respondent MARIO H.
4 SILVA is REVOKED.

5 Pursuant to Government Code section 11520, subdivision (c), Respondent may
6 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
7 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
8 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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10 This Decision shall become effective on August 25, 2006.

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12 It is so ORDERED July 26, 2006

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15 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
16 DEPARTMENT OF CONSUMER AFFAIRS

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19 Attachments:

20 Exhibit A: Accusation No.AC-2004-40, Related Documents, and Declaration of Service

21 Exhibit B: Notice of Defense, Notice of Hearing, and Service Documents

22 DOJ docket number:03541110-LA2004601242
23 60148450.wpd
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1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN MELTON WILSON, State Bar No. 106092
Deputy Attorney General
3 California Department of Justice
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4 Los Angeles, CA 90013
Telephone: (213) 897-4942
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2004-40

12 MARIO H. SILVA
13 P.O. Box 1268
14 Brea, CA 92622

15 Certified Public Accountant Certificate No.
19649

A C C U S A T I O N

16 Respondent.

17
18 Complainant CAROL SIGMANN, for causes for discipline alleges:

19 **PARTIES**

20 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy, Department of
22 Consumer Affairs.

23 2. On or about December 7, 1973, the California Board of Accountancy
24 issued Certified Public Accountant certificate No. 19649 to Mario H. Silva (Respondent).

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3. The Certificate was expired during the period from at least approximately March 1, 1989 through July 30, 1991, because the renewal fee(s), required by the Business and Professions Code 5070.6, was not paid; and a declaration of compliance with continuing education regulations was not submitted.

4. The Certificate was subsequently renewed effective August 1, 1991, through July 31, 1992. The Certificate was expired during the period August 1, 1992, through August 28, 1992, again due to failure to pay the renewal fee and submit proof of compliance with continuing education requirements.

5. The Certificate was subsequently renewed effective August 29, 1992, through July 31, 1994. The Certificate was expired during the period August 1, 1994, through August 26, 1994, again due to failure to pay the renewal fee and submit proof of compliance with continuing education requirements.

6. The Certificate was subsequently renewed effective August 27, 1994, through July 31, 1996. The Certificate expired during the period August 1, 1996, through August 23, 1996, again due to failure to pay the renewal fee and submit proof of compliance with continuing education requirements.

7. The Certificate was subsequently renewed effective August 24, 1996, through July 31, 1998. The Certificate expired during the period August 1, 1998, through August 21, 1998, again due to failure to pay the renewal fee and submit proof of compliance with continuing education requirements.

8. The Certificate was subsequently renewed effective August 22, 1998, has been current since that date, and will expire on July 31, 2006, unless renewed.

JURISDICTION

9. This Accusation is brought before the California Board of Accountancy (Board), under the authority of the following sections of the Business and Professions Code (Code).

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1 10. Business and Professions Code section 5062 states:

2 "A licensee shall issue a report which conforms to professional standards upon
3 completion of a compilation, review or audit of financial statements."

4 11. Business and Professions Code section 5100, states:

5 "After notice and hearing the board may revoke, suspend, or refuse to renew any
6 permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5
7 (commencing with Section 5080), or may censure the holder of that permit or certificate for
8 unprofessional conduct that includes, but is not limited to, one or any combination of the
9 following causes:

10

11 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
12 board under the authority granted under this chapter."

13 12. Section 5107, subdivision (a), states, in pertinent part:

14 "The executive officer of the board may request the administrative law judge, as a
15 part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or
16 certificate found to have committed a violation or violations of this chapter to pay to the board all
17 reasonable costs of investigation and prosecution of the case, including, but not limited to,
18 attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

19 13. California Code of Regulations, title 16, section 52, states:

20 "(a) A licensee shall respond to any inquiry by the Board or its appointed
21 representatives within 30 days. The response shall include making available all files, working
22 papers and other documents requested."

23 "(b) A licensee shall respond to any subpoena issued by the Board or its executive
24 or the assistant executive officer in the absence of the executive officer within 30 days and in
25 accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

26 "(d) A licensee shall provide true and accurate information and responses to
27 questions, subpoenas, interrogatories or other requests for information or documents and not take
28 any action to obstruct any Board inquiry, investigation, hearing or proceeding."

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F. WRITTEN AND TELEPHONIC INQUIRY:

1. On October 10, 2002, in a further attempt to obtain materials requested in the August 16, 2002 letter, a Board investigator contacted Respondent by telephone. Respondent told the investigator that he did not remember receiving the August 16, 2002 letter. A second copy was faxed to him.

2. On February 24, 2003, another letter was sent to Respondent via certified and regular mail requesting the same information as the August 16, 2002 letter. The letter also advised the licensee that he was a violation of the Accountancy Act if he failed to respond to a Board request within 30 days. The certified mail receipt showed that the letter was received February 26, 2003, and was signed for by R. F. Silva. No response was received.

3. Another letter was sent to Respondent via certified and regular mail on April 17, 2003, requesting the same information as in the February 24, 2003 letter. The certified mail receipt showed that the letter was received April 21, 2003, and was signed for by an Alicia S. Almanza. No response was received.

4. A Board investigator telephoned Respondent on May 29, 2003, and left a voicemail requesting a return call. Respondent returned the call on May 30, 2003, leaving a voicemail stating he would be out of the office the next two days and would call again on "Tuesday." Respondent did not call Tuesday or at any time prior to the investigator's next call.

5. A Board investigator telephoned Respondent again on July 9, 2003, and left a voicemail stating that he needed a response to the April 17, 2003 letter. Respondent called back later the same day and left a voicemail stating he would be out of the office the rest of the week and would call again "Monday afternoon". Respondent did not call again.

G. INVESTIGATORY SUBPOENA

1. Complainant authorized issuance of an investigatory subpoena to Respondent, pursuant to section 5108 directing Respondent to produce certain documents and information by mail or delivery to the Board's office in Sacramento.

\\

2. The subpoena and accompanying documents were served by first class and certified mail to Respondent's address of record on September 15, 2003.

3. Respondent produced nothing in timely response to the subpoena.

SECOND CAUSE FOR DISCIPLINE

(Failure of Report to Conform to Professional Standards)

15. Respondent is subject to disciplinary action under section 5062, due to his issuance of a report upon completion of his audit of financial statements of Dynasty Escrow for the year ending April 30, 2001, which does not conform to professional standards.

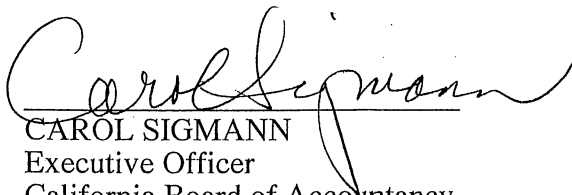
A. The audit report does not conform to professional standards because it failed to include the following:

1. A title that includes the word independent.
2. A statement that the financial statements identified in the report were audited.
3. A statement that the financial statements are the responsibility of the Company's management and that the auditor's responsibility is to express an opinion on the financial statements based on his or her audit.
4. A statement that the audit was conducted in accordance with generally accepted auditing standards and an identification of the United States of America as the country of origin of those standards.
5. A statement that those standards require that the auditor plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.
6. A statement that an audit includes :
 - (a) Examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements.
 - (b) Assessing the principles used and significant estimates made by management.
 - (c) Evaluating the overall financial statement presentation.

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3. Taking such other and further action as deemed necessary and proper.

DATED: July 19, 2005



CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

50044178.wpd

AUG 07 2006

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against

Case No. AC-2004-40
OAH No. 2006030130

MARIO H. SILVA

Certified Public Accountant
Certification No. 19649

DEFAULT DECISION
AND ORDER

Respondent.

MOTION TO VACATE DEFAULT DECISION

I hereby request that the California Board of Accountancy vacate the default decision in the above action.

I was late to the hearing on June 2, 2006, and evidently arrived a few minutes after the default decision was entered. I spoke to the administrative judge when I got to the hearing room, and she told me that I had just missed the representatives from the Board of Accountancy, and that your representative had to leave before I arrived to go back to Sacramento. She said that I may have passed them in the hall. I called the judge's office several times on the way from Orange County to downtown Los Angeles to let them know I was on the way, but was running very late due to one of my son's having a minor traffic accident, and then compounded by heavy traffic on the freeways, and downtown streets.

I would like the opportunity to present information in defense of the accusations against me, so that a fair and just resolution can be determined..

Please let me know if you need additional information to consider this request.

Dated: August 3, 2006

Mario H. Silva
MARIO H. SILVA

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

MARIO H. SILVA,

Respondent.

Case No. AC-2004-40

OAH No. 2006030130

**ORDER DENYING MOTION TO VACATE
DEFAULT DECISION**

WHEREAS, on July 26, 2006, the California Board of Accountancy issued a Default Decision and Order revoking the license of Respondent Mario H. Silva; and


WHEREAS, on August 7, 2006, Respondent filed a motion to vacate that default decision and order; and

WHEREAS, the Board having considered the merits of this motion pursuant to Government Code Section 11520, hereby DENIES Respondent's Motion to Vacate the Default Decision and Order issued on July 26, 2006.

It is so ordered.

The effective date of this Order is August 25, 2006

DATED: August 25, 2006


RONALD BLANC
President
California Board of Accountancy